

CRS Report for Congress

Journalists' Privilege to Withhold Information in Judicial and Other Proceedings: State Shield Statutes

Updated June 27, 2007

Henry Cohen
Legislative Attorney
American Law Division



Prepared for Members and
Committees of Congress

Report Documentation Page			<i>Form Approved OMB No. 0704-0188</i>
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1. REPORT DATE 27 JUN 2007	2. REPORT TYPE	3. DATES COVERED 00-00-2007 to 00-00-2007	
4. TITLE AND SUBTITLE Journalists Privilege to Withhold Information in Judicial and Other Proceedings: State Shield Statutes		5a. CONTRACT NUMBER	
		5b. GRANT NUMBER	
		5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)		5d. PROJECT NUMBER	
		5e. TASK NUMBER	
		5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Congressional Research Service,The Library of Congress,101 Independence Ave, SE,Washington,DC,20540-7500		8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)		10. SPONSOR/MONITOR'S ACRONYM(S)	
		11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited			
13. SUPPLEMENTARY NOTES			
14. ABSTRACT			
15. SUBJECT TERMS			
16. SECURITY CLASSIFICATION OF:		17. LIMITATION OF ABSTRACT Same as Report (SAR)	18. NUMBER OF PAGES 50
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified	19a. NAME OF RESPONSIBLE PERSON

Journalists' Privilege to Withhold Information in Judicial and Other Proceedings: State Shield Statutes

Summary

Absent a statutory or constitutional recognition of journalistic privilege, a reporter may be compelled to testify in legal, administrative, or other governmental proceedings. To date, 33 states and the District of Columbia have recognized a journalists' privilege through enactment of press "shield laws," which protect the relationship between reporters, their source, and sometimes, the information that may be communicated in that relationship. Another 16 states have adopted a journalists' privilege through court decisions; Wyoming is the only state without a legislatively or judicially adopted journalists' privilege. The journalists' privilege is distinct from other recognized privileges, in that the privilege vests only with the journalist, not with the source of the information.

This report briefly provides a brief overview of the state shield statutes and then sets forth the full text of each.

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Introduction

In general, in both federal and state judicial proceedings, every competent person may be compelled to testify. Testimonial privileges are exceptions to this rule; they are generally granted to allow concealment of communications made in confidence between persons holding certain relationships that have been deemed worthy of protection. Testimonial privileges are generally granted by common law or by statute; these include the lawyer-client and the doctor-patient privileges. There is also one testimonial privilege expressly granted in the United States Constitution: the Fifth Amendment's guarantee that no person "shall be compelled in any criminal case to be a witness against himself."

Absent a statutory or constitutional recognition of journalists' privilege, a reporter may be compelled to testify in legal, administrative, or other governmental proceedings. Thirty-three states and the District of Columbia have recognized a journalists' privilege through enactment of press "shield laws," which protect the relationship between reporters, their source, and sometimes, the information that may be communicated in that relationship.¹ Another 16 states have recognized a journalists' privilege through court decisions; Wyoming is the only state that has no legislatively or judicially adopted journalists' privilege. The journalists' privilege is distinct from other recognized privileges in that it vests only with the journalist, not with the source of the information.

In *Branzburg v. Hayes*, 408 U.S. 665 (1972), the Supreme Court ruled for the first and only time on a claim of journalists' privilege. It held that journalists have no constitutional privilege to refuse to testify before a grand jury, unless the grand jury investigation was "instituted or conducted other than in good faith." *Id.* at 707. The court reasoned that the public's interest in prosecuting crime outweighed its interest in journalists' being permitted to preserve their confidential relationships.

In *Branzburg*, the Supreme Court noted that there was "merit in leaving state legislatures free, within First Amendment limits, to fashion their own standards" regarding journalists' privilege. *Id.* at 706. In addition, the court noted that "[i]t goes without saying, of course, that we are powerless to bar state courts from responding in their own way and construing their own constitutions so as to

¹ The most recent of these statute is that of the State of Washington, which was signed by the governor on April 27, 2007, and takes effect July 22, 2007.

recognize a newsman's privilege, either qualified or absolute." *Id.* It is with that understanding that, since *Branzburg*, 49 states and the District of Columbia have either enacted legislation or issued court rulings protecting the press, to varying degrees, from unfettered disclosure of sources, work product, and information generally.

The various state statutes range in scope, from broad protections that provide an absolute journalistic privilege, to shield laws that offer a qualified privilege. The majority of state shield laws offer some form of a qualified privilege to reporters, protecting source information in judicial settings, unless the compelling party can establish that the information is (i) relevant or material; (ii) unavailable by other means, or through other sources; and (iii) that a compelling need exists for that information. States may vary this last prong, with some requiring the compelling party to establish whether the need exists as to the party's case, and others whether the need serves a broader public policy.

Although the vast majority of states protect a confidential source's identity, a number of states also protect a reporter's notes, outtakes, or work product. A small minority of states further protect a reporter's personal observations.

In addition to addressing what is covered, states differ as to who is covered and under what situations they are covered. For instance, many states require that a newsperson must be professionally engaged in the dissemination of information to the public, while other states use broader definitions of what constitutes a press person and may include individuals who are freelancers, authors, electronic publishers, or educators. Some states further require that, in order to qualify as a member of the news media, evidence or records must be kept documenting actual publication or broadcast, especially when radio or television media are concerned.

Finally, Federal Rule of Evidence 501 provides that, in civil cases that arise under state law but are brought in federal court, privileges shall be determined "in accordance with State law." It also provides that, in federal courts, "the privilege of a witness ... shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. The federal courts have not resolved whether the common law provides a journalists' privilege.

The remainder of this report sets forth the full text of the state shield statutes.

State Shield Laws

ALABAMA

(Ala. Code 1975 § 12-21-142 (2004))

Sec. 12-21-142 Exemption of news-gathering persons from disclosing sources.

No person engaged in, connected with or employed on any newspaper, radio broadcasting station or television station, while engaged in a news-gathering capacity, shall be compelled to disclose in any legal proceeding or trial, before any court or before a grand jury of any court, before the presiding officer of any tribunal or his agent or agents or before any committee of the Legislature or elsewhere the sources of any information procured or obtained by him and published in the newspaper, broadcast by any broadcasting station, or televised by any television station on which he is engaged, connected with or employed.

ALASKA

(Alaska Stat. §§ 09.25.300-390 (Matthew Bender 2004))

Sec. § 09.25.300 Claiming of privilege by public official or reporter.

Except as provided in AS 09.25.300 - 09.25.390, a public official or reporter may not be compelled to disclose the source of information procured or obtained while acting in the course of duties as a public official or reporter.

Sec. 09.25.310 Challenge of privilege before superior or supreme court.

(a) When a public official or reporter claims the privilege in a cause being heard before the supreme court or a superior court of this state, a person who has the right to question the public official or reporter in that proceeding, or the court on its own motion, may challenge the claim of privilege. The court shall make or cause to be made whatever inquiry the court thinks necessary to a determination of the issue. The inquiry may be made instanter by way of questions put to the witness claiming the privilege and a decision then rendered, or the court may require the presence of other witnesses or documentary showing or may order a special hearing for the determination of the issue of privilege.

(b) The court may deny the privilege and may order the public official or the reporter to testify, imposing whatever limits upon the testimony and upon the right of cross-examination of the witness as may be in the public interest or in the interest of a fair trial, if it finds the withholding of the testimony would

(1) result in a miscarriage of justice or the denial of a fair trial to those who challenge the privilege; or

(2) be contrary to the public interest.

Sec. 09.25.320 Challenge of privilege before other bodies

(a) This section is applicable to a hearing held under the laws of this state

- (1) before a court other than the supreme or a superior court;
- (2) before a court commissioner, referee, or other court appointee;
- (3) in the course of legislative proceedings or before a commission, agency, or committee created by the legislature;
- (4) before an agency or representative of an agency of the state, borough, city or other municipal corporation, or other body; or
- (5) before any other forum of this state.

(b) If, in a hearing, a public official or a reporter should refuse to divulge the source of information, the agency body, person, official, or party seeking the information may apply to the superior court for an order divesting the official or reporter of the privilege. When the issue is raised before the supreme or a superior court, the application must be made to that court.

(c) Application for an order shall be made by verified petition setting out the reasons why the disclosure is essential to the administration of justice, a fair trial in the instant proceeding, or the protection of the public interest. Upon application, the court shall determine the notice to be given to the public official or reporter and fix the time and place of hearing. The court shall make or cause to be made whatever inquiry the court thinks necessary, and make a determination of the issue as provided for in AS 09.25.310.

Sec. 09.25.330 Order subject to review

An order of the superior court entered under AS 09.25.300 - 09.25.390 shall be subject to review by the supreme court, by appeal or by certiorari, as the rules of that court may provide. During the pendency of the appeal, the privilege shall remain in full force and effect.

Sec. 09.25.340 Extent of privilege

When a public official or reporter claims the privilege conferred by AS 09.25.300 - AS 09.25.390 and the public official or reporter has not been divested of the privilege by order of the supreme or superior court, neither the public official or reporter nor the news organization with which the reporter was associated may thereafter be permitted to plead or prove the sources of information withheld, unless the informant consents in writing or in open court.

Sec. 09.25.350 Application of privilege in other courts

AS 09.25.300 - 09.25.390 also apply to proceedings held under the laws of the United States or any other state where the law of this state is being applied.

Sec. 09.25.360 AS 09.25.300 - 09.25.390 do not abridge other privileges.

AS 09.25.300 - 09.25.390 may not be construed to abridge any of the privileges recognized under the laws of this state, whether at common law or by statute.

Sec. 09.25.390 Definitions for AS 09.25.300 - 09.25.390

In AS 09.25.300 - 09.25.390, unless the context otherwise requires,

- (1) “news organization” means
 - (A) an individual, partnership, corporation, or other association regularly engaged in the business of
 - (i) publishing a newspaper or other periodical that reports news events, is issued at regular intervals, and has a general circulation;
 - (ii) providing newsreels or other motion picture news for public showing; or
 - (iii) broadcasting news to the public by wire, radio, television, or facsimile;
 - (B) a press association or other association of individuals, partnerships, corporations, or other associations described in (A)(i), (ii), or (iii) of this paragraph engaged in gathering news and disseminating it to its members for publication;
- (2) “privilege” means the conditional privilege granted to public officials and reporters to refuse to testify as to a source of information;
- (3) “public official” means a person elected to a public office created by the Constitution or laws of this state, whether executive, legislative, or judicial, and who was holding that office at the time of the communication for which privilege is claimed;
- (4) “reporter” means a person regularly engaged in the business of collecting or writing news for publication, or presentation to the public, through a news organization; it includes persons who were reporters at the time of the communication, though not at the time of the claim of privilege.

ARIZONA

(Ariz. Rev. Stat. Ann. § 12-2237 (West 2004))

§ 12-2237. Reporter and informant

A person engaged in newspaper, radio, television or reportorial work, or connected with or employed by a newspaper, radio or television station, shall not be compelled

to testify or disclose in a legal proceeding or trial or any proceeding whatever, or before any jury, inquisitorial body or commission, or before a committee of the legislature, or elsewhere, the source of information procured or obtained by him for publication in a newspaper or for broadcasting over a radio or television station with which he was associated or by which he is employed.

ARKANSAS

(Ark. Code Ann. § 16-85-510 (West 2003 & Supp. 2004))

§ 16-85-510 Privilege

Before any editor, reporter, or other writer for any newspaper, periodical, or radio station, or publisher of any newspaper or periodical, or manager or owner of any radio station shall be required to disclose to any grand jury or to any other authority the source of information used as the basis for any article he may have written, published, or broadcast, it must be shown that the article was written, published, or broadcast in bad faith, with malice, and not in the interest of the public welfare.

CALIFORNIA

(Cal. Evid. Code § 1070 (West 2005))

§ 1070. Refusal to disclose news source

(a) A publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed, cannot be adjudged in contempt by a judicial, legislative, administrative body, or any other body having the power to issue subpoenas, for refusing to disclose, in any proceeding as defined in Section 901, the source of any information procured while so connected or employed for publication in a newspaper, magazine or other periodical publication, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

(b) Nor can a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

(c) As used in this section, “unpublished information” includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated.

COLORADO

(Colo. Rev. Stat. Ann. § 13-90-119 (West 2004))

13-90-119. Privilege for newsperson

(1) As used in this section, unless the context otherwise requires:

(a) "Mass medium" means any publisher of a newspaper or periodical; wire service; radio or television station or network; news or feature syndicate; or cable television system.

(b) "News information" means any knowledge, observation, notes, documents, photographs, films, recordings, videotapes, audiotapes, and reports, and the contents and sources thereof, obtained by a newsperson while engaged as such, regardless of whether such items have been provided to or obtained by such newsperson in confidence.

(c) "Newsperson" means any member of the mass media and any employee or independent contractor of a member of the mass media who is engaged to gather, receive, observe, process, prepare, write, or edit news information for dissemination to the public through the mass media.

(d) "Press conference" means any meeting or event called for the purpose of issuing a public statement to members of the mass media, and to which members of the mass media are invited in advance.

(e) "Proceeding" means any civil or criminal investigation, discovery procedure, hearing, trial, or other process for obtaining information conducted by, before, or under the authority of any judicial body of the state of Colorado. Such term shall not include any investigation, hearing, or other process for obtaining information conducted by, before, or under the authority of the general assembly.

(f) "Source" means any person from whom or any means by or through which news information is received or procured by a newsperson, while engaged as such, regardless of whether such newsperson was requested to hold confidential the identity of such person or means.

(2) Notwithstanding any other provision of law to the contrary and except as provided in subsection (3) of this section, no newsperson shall, without such newsperson's express consent, be compelled to disclose, be examined concerning refusal to disclose, be subjected to any legal presumption of any kind, or be cited, held in contempt, punished, or subjected to any sanction in any judicial proceedings for refusal to disclose any news information received, observed, procured, processed, prepared, written, or edited by a newsperson, while acting in the capacity of a newsperson; except that the privilege of nondisclosure shall not apply to the following:

(a) News information received at a press conference;

- (b) News information which has actually been published or broadcast through a medium of mass communication;
- (c) News information based on a newsperson's personal observation of the commission of a crime if substantially similar news information cannot reasonably be obtained by any other means;
- (d) News information based on a newsperson's personal observation of the commission of a class 1, 2, or 3 felony.

(3) Notwithstanding the privilege of nondisclosure granted in subsection (2) of this section, any party to a proceeding who is otherwise authorized by law to issue or obtain subpoenas may subpoena a newsperson in order to obtain news information by establishing by a preponderance of the evidence, in opposition to a newsperson's motion to quash such subpoena:

- (a) That the news information is directly relevant to a substantial issue involved in the proceeding;
- (b) That the news information cannot be obtained by any other reasonable means; and
- (c) That a strong interest of the party seeking to subpoena the newsperson outweighs the interests under the first amendment to the United States constitution of such newsperson in not responding to a subpoena and of the general public in receiving news information.

(4) The privilege of nondisclosure established by subsection (2) of this section may be waived only by the voluntary testimony or disclosure of a newsperson that directly addresses the news information or identifies the source of such news information sought. A publication or broadcast of a news report through the mass media concerning the subject area of the news information sought, but which does not directly address the specific news information sought, shall not be deemed a waiver of the privilege of nondisclosure as to such specific news information.

(5) In any trial to a jury in an action in which a newsperson is a party as a result of such person's activities as a newsperson and in which the newsperson has invoked the privilege created by subsection (2) of this section, the jury shall be neither informed nor allowed to learn that such newsperson invoked such privilege or has thereby declined to disclose any news information.

(6) Nothing in this section shall preclude the issuance of a search warrant in compliance with the federal "Privacy Protection Act of 1980", 42 U.S.C. sec. 2000aa.

CONNECTICUT

(Conn. Gen. Stat. Ann. 52-146t, 2006 P.A. 06-140)

- (a) As used in this section:

(1) "Information" has its ordinary meaning and includes, but is not limited to, any oral, written or pictorial material, whether or not recorded, including any notes, outtakes, photographs, video or sound tapes, film or other data of whatever sort in any medium; and

(2) "News media" means:

(A) Any newspaper, magazine or other periodical, book publisher, news agency, wire service, radio or television station or network, cable or satellite or other transmission system or carrier, or channel or programming service for such station, network, system or carrier, or audio or audiovisual production company that disseminates information to the public, whether by print, broadcast, photographic, mechanical, electronic or any other means or medium;

(B) Any person who is or has been an employee, agent or independent contractor of any entity specified in subparagraph (A) of this subdivision and is or has been engaged in gathering, preparing or disseminating information to the public for such entity, or any other person supervising or assisting such person with gathering, preparing or disseminating information; or

(C) Any parent, subsidiary, division or affiliate of any person or entity specified in subparagraph (A) or (B) of this subdivision to the extent the subpoena or other compulsory process seeks the identity of a source or the information described in subsection (b) of this section.

(b) No judicial, executive or legislative body with the power to issue a subpoena or other compulsory process may compel the news media to testify concerning, or to produce or otherwise disclose, any information obtained or received, whether or not in confidence, by the news media in its capacity in gathering, receiving or processing information for potential communication to the public, or the identity of the source of any such information, or any information that would tend to identify the source of any such information, unless such judicial, executive or legislative body complies with the provisions of subsections (c) to (e), inclusive, of this section.

(c) Prior negotiations with the news media shall be pursued in all matters in which the issuance of a subpoena to, or the initiation of other compulsory process against, the news media is contemplated for information described in subsection (b) of this section or the identity of the source of such information, or any information that would tend to identify the source of any such information.

(d) If the news media and the party seeking to compel disclosure of information described in subsection (b) of this section or the identity of the source of any such information, or any information that would tend to identify the source of any such information, fail to reach a resolution, a court may compel disclosure of such information or the identity of the source of such information only if the court finds, after notice to and an opportunity to be heard by the news media, that the party seeking such information or the identity of the source of such information has established by clear and convincing evidence:

(1) That (A) in a criminal investigation or prosecution, based on information obtained from other sources than the news media, there are reasonable grounds to believe that a crime has occurred, or (B) in a civil action or proceeding, based on information obtained from other sources than the news media, there are reasonable grounds to sustain a cause of action; and

(2) That (A) the information or the identity of the source of such information is critical or necessary to the investigation or prosecution of a crime or to a defense thereto, or to the maintenance of a party's claim, defense or proof of an issue material thereto, (B) the information or the identity of the source of such information is not obtainable from any alternative source, and (C) there is an overriding public interest in the disclosure.

(e) A court of this state shall apply the procedures and standards specified by this section to any subpoena or other compulsory process whether it arises from or is associated with a proceeding under the laws of this state or any other jurisdiction, except that with respect to a proceeding arising under the laws of another jurisdiction, a court of this state shall not afford lesser protection to the news media than that afforded by such other jurisdiction. No subpoena or compulsory process arising from or associated with a proceeding under the laws of another jurisdiction shall be enforceable in this state unless a court in this state has personal jurisdiction over the person or entity against which enforcement is sought.

(f) The provisions of subsection (b) of this section protecting from compelled disclosure information described in said subsection and the identity of the source of any such information shall also apply if a subpoena is issued to, or other compulsory process is initiated against, a third party that seeks information concerning business transactions between such third party and the news media for the purpose of obtaining information described in said subsection or discovering the identity of a source of any such information. Whenever a subpoena is issued to, or other compulsory process is initiated against, a third party that seeks information concerning business transactions between such third party and the news media, the affected news media shall be given reasonable and timely notice of the subpoena or compulsory process before it is executed or initiated, as the case may be, and an opportunity to be heard.

(g) Publication or dissemination by the news media of information described in subsection (b) of this section, or a portion thereof, shall not constitute a waiver of the protection from compelled disclosure provided in said subsection with respect to any information that is not published or disseminated.

(h) Any information obtained in violation of the provisions of this section, and the identity of the source of such information, shall be inadmissible in any action, proceeding or hearing before any judicial, executive or legislative body.

(i) Whenever any person or entity seeks the disclosure from the news media of information that is not protected against compelled disclosure pursuant to subsection (b) of this section, such person or entity shall pay the actual cost that would be incurred by the news media in making a copy of such information if a subpoena or

other compulsory process was not available, and may not use a subpoena or other compulsory process as a means to avoid paying such actual cost.

(j) Nothing in subsections (a) to (i), inclusive, of this section shall be construed to deny or infringe the rights of an accused in a criminal prosecution guaranteed under the sixth amendment to the Constitution of the United States and article twenty-ninth of the amendments to the Constitution of the state of Connecticut.

DELAWARE

(Del. Code Ann. Tit. 10, §§ 4320-4326 (2004))

§ 4320 Definitions.

As used in this subchapter:

(1) “Adjudicative proceeding” means any judicial or quasi-judicial proceeding in which the rights of parties are determined but does not include any proceeding of a grand jury.

(2) “Information” means any oral, written or pictorial material and includes, but is not limited to, documents, electronic impulses, expressions of opinion, films, photographs, sound records, and statistical data.

(3) “Person” means individual, corporation, statutory trust, business trust, estate, trust, partnership or association, governmental body, or any other legal entity.

(4) “Reporter” means any journalist, scholar, educator, polemicist, or other individual who either:

a. At the time he or she obtained the information that is sought was earning his or her principal livelihood by, or in each of the preceding 3 weeks or 4 of the preceding 8 weeks had spent at least 20 hours engaged in the practice of, obtaining or preparing information for dissemination with the aid of facilities for the mass reproduction of words, sounds, or images in a form available to the general public; or

b. Obtained the information that is sought while serving in the capacity of an agent, assistant, employee, or supervisor of an individual who qualifies as a reporter under subparagraph a.

(5) “Source” means a person from whom a reporter obtained information by means of written or spoken communication or the transfer of physical objects, but does not include a person from whom a reporter obtained information by means of personal observation unaccompanied by any other form of communication and does not include a person from whom another person who is not a reporter obtained information, even if the information was ultimately obtained by a reporter.

(6) “Testify” means give testimony, provide tangible evidence, submit to a deposition, or answer interrogatories.

(7) “Within the scope of his or her professional activities” means any situation, including a social gathering, in which the reporter obtains information for the purpose of disseminating it to the public, but does not include any situation in which the reporter intentionally conceals from the source the fact that he or she is a reporter and does not include any situation in which the reporter is an eyewitness to or participant in an act involving physical violence or property damage.

§ 4321 Privilege in nonadjudicative proceedings.

A reporter is privileged in a nonadjudicative proceeding to decline to testify concerning either the source or content of information that he obtained within the scope of his professional activities.

§ 4322 Privilege in adjudicative proceedings.

A reporter is privileged in an adjudicative proceeding to decline to testify concerning the source or content of information that he or she obtained within the scope of his or her professional activities if the reporter states under oath that the disclosure of the information would violate an express or implied understanding with the source under which the information was originally obtained or would substantially hinder the reporter in the maintenance of existing source relationships or the development of new source relationships.

§ 4323 Exceptions to the privilege in adjudicative proceedings.

(a) Unless the disclosure of the content of the information would substantially increase the likelihood that the source of the information will be discovered, the privilege provided by § 4322 shall not prevent a reporter from being required in an adjudicative proceeding to testify concerning the content, but not the source, of information that the reporter obtained within the scope of his or her professional activities if the judge determines that the public interest in having the reporter’s testimony outweighs the public interest in keeping the information confidential. In making this determination, the judge shall take into account the importance of the issue on which the information is relevant, the efforts that have been made by the subpoenaing party to acquire evidence on the issue from alternative sources, the sufficiency of the evidence available from alternative sources, the circumstances under which the reporter obtained the information, and the likely effect that disclosure of the information will have on the future flow of information to the public.

(b) The privilege provided by § 4322 shall not prevent a reporter from being required in an adjudicative proceeding to testify concerning either the source or the content of information that the reporter obtained within the scope of his or her professional activities if the party seeking to have the reporter testify proves by a preponderance of the evidence that the sworn statement submitted by the reporter as required by § 4322 is untruthful.

§ 4324 Determination of privilege claim.

A person who invokes the privilege provided by this subchapter may not be required to testify in any proceeding except by court order. If a person invokes the privilege in any proceeding other than a court proceeding, the body or party seeking to have the person testify may apply to the Superior Court for an order requiring the claimant of the privilege to testify. If the Court determines that the claimant does not qualify for the privilege under the provisions of this subchapter, it shall order the claimant to testify.

§ 4325 Waiver.

If a reporter waives the privilege provided by this subchapter with respect to certain facts, he or she may be cross-examined on the testimony or other evidence he or she gives concerning those facts but not on other facts with respect to which the reporter claims the privilege. A reporter does not waive or forfeit the privilege by disclosing all or any part of the information protected by the privilege to any other person.

DISTRICT OF COLUMBIA

(D.C. Code Ann. §§ 16-4701 to 4704 (2004))

16-4701. Definitions

For the purpose of this chapter, the term “news media” means:

- (1) Newspapers;
- (2) Magazines;
- (3) Journals;
- (4) Press associations;
- (5) News agencies;
- (6) Wire services;
- (7) Radio;
- (8) Television; or
- (9) Any printed, photographic, mechanical, or electronic means of disseminating news and information to the public.

§ 16-4702. Compelled disclosure prohibited.

Except as provided in 1. section 16-4703, no judicial, legislative, administrative, or other body with the power to issue a subpoena shall compel any person who is or has been employed by the news media in a news gathering or news disseminating capacity to disclose:

- (1) The source of any news or information procured by the person while employed by the news media and acting in an official news gathering capacity, whether or not the source has been promised confidentiality; or
- (2) Any news or information procured by the person while employed by the news media in the course of pursuing professional activities that is not itself communicated in the news media, including any:
 - (A) Notes;

- (B) Outtakes;
- (C) Photographs or photographic negatives;
- (D) Video or sound tapes;
- (E) Film; or
- (F) Other data, irrespective of its nature, not itself communicated in the news media.

§ 16-4703. Compelled disclosure permitted.

- (a) A court may compel disclosure of news or information otherwise protected from disclosure under section 16-4702(2) if the court finds that the party seeking the news or information established by clear and convincing evidence that:
 - (1) The news or information is relevant to a significant legal issue before a judicial, legislative, administrative, or other body that has the power to issue a subpoena;
 - (2) The news or information could not, with due diligence, be obtained by any alternative means; and
 - (3) There is an overriding public interest in the disclosure.
- (b) A court may not compel disclosure of the source of any information protected under section 16-4702.

§ 16-4704. Activities not constituting a waiver

The publication by the news media or the dissemination by a person employed by the news media of a source of news or information, or a portion of the news or information, procured while pursuing professional activities shall not constitute a waiver of the protection from compelled disclosure that is contained in section 16-4702.

FLORIDA

(Fla. Stat. Ann. § 90.5015 (West 2004))

90.5015. Journalist's privilege

(1) Definitions. — For purposes of this section, the term:

- (a) “Professional journalist” means a person regularly engaged in collecting, photographing, recording, writing, editing, reporting, or publishing news, for gain or livelihood, who obtained the information sought while working as a salaried employee of, or independent contractor for, a newspaper, news journal, news agency, press association, wire service, radio or television station, network, or news magazine. Book authors and others who are not professional journalists, as defined in this paragraph, are not included in the provisions of this section.
- (b) “News” means information of public concern relating to local, statewide, national, or worldwide issues or events.

(2) Privilege. — A professional journalist has a qualified privilege not to be a witness concerning, and not to disclose the information, including the identity of any source, that the professional journalist has obtained while actively gathering news. This privilege applies only to information or eyewitness observations obtained within the normal scope of employment and does not apply to physical evidence, eyewitness observations, or visual or audio recording of crimes. A party seeking to overcome this privilege must make a clear and specific showing that:

- (a) The information is relevant and material to unresolved issues that have been raised in the proceeding for which the information is sought;
- (b) The information cannot be obtained from alternative sources; and
- (c) A compelling interest exists for requiring disclosure of the information.

(3) Disclosure. — A court shall order disclosure pursuant to subsection (2) only of that portion of the information for which the showing under subsection (2) has been made and shall support such order with clear and specific findings made after a hearing.

(4) Waiver. — A professional journalist does not waive the privilege by publishing or broadcasting information.

(5) Construction. — This section must not be construed to limit any privilege or right provided to a professional journalist under law.

(6) Authentication. — Photographs, diagrams, video recordings, audio recordings, computer records, or other business records maintained, disclosed, provided, or produced by a professional journalist, or by the employer or principal of a professional journalist, may be authenticated for admission in evidence upon a showing, by affidavit of the professional journalist, or other individual with personal knowledge, that the photograph, diagram, video recording, audio recording, computer record, or other business record is a true and accurate copy of the original, and that the copy truly and accurately reflects the observations and facts contained therein.

(7) Accuracy of evidence. — If the affidavit of authenticity and accuracy, or other relevant factual circumstance, causes the court to have clear and convincing doubts as to the authenticity or accuracy of the proffered evidence, the court may decline to admit such evidence.

(8) Severability. — If any provision of this section or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this section.

GEORGIA

(Ga. Code Ann. § 24-9-30 2004))

24-9-30. Qualified privilege for persons, companies, or other entities engaged in news gathering or dissemination

Any person, company, or other entity engaged in the gathering and dissemination of news for the public through a newspaper, book, magazine, or radio or television broadcast shall have a qualified privilege against disclosure of any information, document, or item obtained or prepared in the gathering or dissemination of news in any proceeding where the one asserting the privilege is not a party, unless it is shown that this privilege has been waived or that what is sought:

- (1) Is material and relevant;
- (2) Cannot be reasonably obtained by alternative means; and
- (3) Is necessary to the proper preparation or presentation of the case of a party seeking the information, document, or item.

HAWAII

No shield law exists for this state.

IDAHO

No shield law exists for this state.

ILLINOIS

(735 Ill. Comp. Stat. Ann. 5/8-901 to -909 (West 2004))

§ 8-901. Source of information.

No court may compel any person to disclose the source of any information obtained by a reporter except as provided in Part 9 of Article VIII of this Act.

§ 8-902. Definitions. As used in this Act:

(a) “reporter” means any person regularly engaged in the business of collecting, writing or editing news for publication through a news medium on a full-time or part-time basis; and includes any person who was a reporter at the time the information sought was procured or obtained.

(b) “news medium” means any newspaper or other periodical issued at regular intervals whether in print or electronic format and having a general circulation; a news service whether in print or electronic format; a radio station; a television station; a television network; a community antenna television service; and any person or corporation engaged in the making of news reels or other motion picture news for public showing.

(c) “source” means the person or means from or through which the news or information was obtained.

§ 8-903. Application to court.

(a) In any case, except a libel or slander case, where a person claims the privilege conferred by Part 9 of Article VIII of this Act, the person or party, body or officer seeking the information so privileged may apply in writing to the circuit court serving the county where the hearing, action or proceeding in which the information is sought for an order divesting the person named therein of such privilege and ordering him or her to disclose his or her source of the information.

(b) In libel or slander cases where a person claims the privilege conferred by Part 9 of Article VIII of this Act, the plaintiff may apply in writing to the court for an order divesting the person named therein of such privilege and ordering him or her to disclose his or her source of information.

§ 8-904. Contents of application.

The application provided in Section 8-903 of this Act shall allege: the name of the reporter and of the news medium with which he or she was connected at the time the information sought was obtained; the specific information sought and its relevancy to the proceedings; and, either, a specific public interest which would be adversely affected if the factual information sought were not disclosed, or, in libel or slander cases, the necessity of disclosure of the information sought to the proof of plaintiff's case. Additionally, in libel or slander cases, the plaintiff must include in the application provided in Section 8-903 a *prima facie* showing of falsity of the alleged defamation and actual harm or injury due to the alleged defamation.

§ 8-905. Civil proceeding.

All proceedings in connection with obtaining an adjudication upon the application not otherwise provided in Part 9 of Article VIII of this Act shall be as in other civil cases.

§ 8-906. Consideration by Court.

In granting or denying divestiture of the privilege provided in Part 9 of Article VIII of this Act the court shall have due regard to the nature of the proceedings, the merits of the claim or defense, the adequacy of the remedy otherwise available, if any, the relevancy of the source, and the possibility of establishing by other means that which it is alleged the source requested will tend to prove.

§ 8-907. Court's findings.

An order granting divestiture of the privilege provided in Part 9 of Article VIII of this Act shall be granted only if the court, after hearing the parties, finds:

- (1) that the information sought does not concern matters, or details in any proceeding, required to be kept secret under the laws of this State or of the Federal government; and
- (2) that all other available sources of information have been exhausted and, either, disclosure of the information sought is essential to the protection of the public interest involved or, in libel or slander cases, the plaintiff's need for disclosure of the information sought outweighs the public interest in protecting the confidentiality of sources of information used by a reporter as part of the

news gathering process under the particular facts and circumstances of each particular case.

If the court enters an order divesting the person of the privilege granted in Part 9 of Article VIII of this Act it shall also order the person to disclose the information it has determined should be disclosed, subject to any protective conditions as the court may deem necessary or appropriate.

§ 8-908. Privilege continues during pendency of appeal.

In case of an appeal the privilege conferred by Part 9 of Article VIII of this Act remains in full force and effect during the pendency of such appeal.

§ 8-909. Contempt.

A person refusing to testify or otherwise comply with the order to disclose the source of the information as specified in such order, after such order becomes final, may be adjudged in contempt of court and punished accordingly.

INDIANA

(Ind. Code Ann. §§ 34-46-4-1 to 2 (West 2004))

34-46-4-1 Applicability of chapter.

Sec. 1. This chapter applies to the following persons:

(1) any person connected with, or any person who has been connected with or employed by:

(A) a newspaper or other periodical issued at regular intervals and having a general circulation; or

(B) a recognized press association or wire service;

as a bona fide owner, editorial or reportorial employee, who receives or has received income from legitimate gathering, writing, editing and interpretation of news; and

(2) any person connected with a licensed radio or television station as owner, official, or as an editorial or reportorial employee who receives or has received income from legitimate gathering, writing, editing, interpreting, announcing or broadcasting of news.

34-46-4-2 Privilege against disclosure of source of information.

Sec. 2. A person described in section 1 of this chapter shall not be compelled to disclose in any legal proceedings or elsewhere the source of any information procured or obtained in the course of the person's employment or representation of a newspaper, periodical, press association, radio station, television station, or wire service, whether:

(1) published or not published:

(A) in the newspaper or periodical; or

(B) by the press association or wire service; or

(2) broadcast or not broadcast by the radio station or television station; by which the person is employed.

IOWA

No shield law exists for this state.

KANSAS

No shield law exists for this state.

KENTUCKY

(Ky. Rev. Stat. Ann. § 421.100 (Baldwin 2004))

421.100 Newspaper, radio or television broadcasting station personnel need not disclose source of information

No person shall be compelled to disclose in any legal proceeding or trial before any court, or before any grand or petit jury, or before the presiding officer of any tribunal, or his agent or agents, or before the General Assembly, or any committee thereof, or before any city or county legislative body, or any committee thereof, or elsewhere, the source of any information procured or obtained by him, and published in a newspaper or by a radio or television broadcasting station by which he is engaged or employed, or with which he is connected.

LOUISIANA

(La. Rev. Stat. Ann. §§ 45:1451-1459 (West 2004))

§ 1451. Definitions

“Reporter” shall mean any person regularly engaged in the business of collecting, writing or editing news for publication through a news media. The term reporter shall include all persons who were previously connected with any news media as aforesaid as to the information obtained while so connected.

“News Media” shall include

- (a) Any newspaper or other periodical issued at regular intervals and having a paid general circulation;
- (b) Press associations;
- (c) Wire service;
- (d) Radio;
- (e) Television; and
- (f) Persons or corporations engaged in the making of news reels or other motion picture news for public showing.

§ 1452. Conditional privilege from compulsory disclosure of informant or source

Except as hereinafter provided, no reporter shall be compelled to disclose in any administrative, judicial or legislative proceedings or anywhere else the identity of any informant or any source of information obtained by him from another person while acting as a reporter.

§ 1453. Revocation of privilege; procedure

In any case where the reporter claims the privilege conferred by this Part, the persons or parties seeking the information may apply to the district court of the parish in which the reporter resides for an order to revoke the privilege. In the event the reporter does not reside within the state, the application shall be made to the district court of the parish where the hearing, action or proceeding in which the information is sought is pending. The application for such an order shall set forth in writing the reason why the disclosure is essential to the protection of the public interest and service of such application shall be made upon the reporter. The order shall be granted only when the court, after hearing the parties, shall find that the disclosure is essential to the public interest. Any such order shall be appealable under Article 2083 of the Louisiana Code of Civil Procedure. In case of any such appeal, the privilege set forth in R.S. 45:1452 shall remain in full force and effect during pendency of such appeal.

§ 1454. Defamation; burden of proof

If the privilege granted herein is claimed and if, in a suit for damages for defamation, a legal defense of good faith has been asserted by a reporter or by a news media with respect to an issue upon which the reporter alleges to have obtained information from a confidential source, the burden of proof shall be on the reporter or news media to sustain this defense.

§ 1455. Substitution of affidavit for appearance and return; effect

A. When a subpoena is served on a news media organization or reporter as those terms are defined in R.S. 45:1451 or on any custodian of records, photographer, or other representative of a news media organization, in any judicial or administrative proceeding to which neither the news media organization nor any reporter, custodian of records, photographer, or other representative is a party, or in any legislative proceeding, it shall not be necessary for the news media organization, the reporter, the custodian of records, the photographer, or the representative thus subpoenaed to appear or to testify in response to the subpoena:

- (1) to confirm the circulation or the broadcast audience of the news media organization, or
- (2) to confirm the publication or broadcast of specified materials, if the reporter, custodian of records, photographer, or other representative of the news media organization delivers by registered mail or by hand, before or at the time specified in the subpoena, an affidavit in conformity with Subsection B of this Section together with any documents or records described in the subpoena to the

clerk of the court or other tribunal, or, if there is no clerk, then to the court or other tribunal, or, with respect to a deposition subpoena, to the party requesting the issuance of the subpoena.

B. An affidavit delivered pursuant to Subsection A of this Section shall state in substance each of the following:

- (1) The name of the proceeding and any docket number assigned to such proceeding as shown on the subpoena itself.
- (2) The name of the affiant and his business title or other description indicating his position or relationship to the party to whom the subpoena was issued if he is not the person to whom it was directed.
- (3) The dates of publication or broadcast records searched and the dates of publication or broadcast of the documents or records actually produced.
- (4) A statement that the documents or records produced were published or broadcast by the news media organization.
- (5) If requested, a statement summarizing the circulation or broadcast audience of the news media organization.
- (6) If requested, a statement describing the placement of an article within a publication.
- (7) An itemization of the costs of complying with the subpoena.

C. An affidavit conforming to the requirements of Subsection B of this Section shall be received in evidence and shall be prima facie proof of its contents. A copy of any document, or the text thereof, or of any record, including, without limitation, any article, photograph, or sound or video recording, identified in the affidavit and stated in the affidavit to have been published or broadcast shall be received in evidence and shall be prima facie proof of publication or broadcast as stated in the affidavit.

D. This Section shall not affect the rights of parties to production of documents pursuant to the laws governing discovery or other laws pertaining thereto.

§ 1456. Service of subpoenas; motion to quash or obtain additional time; award of costs

A. Unless otherwise ordered by the court, upon a showing of good cause therefor, a subpoena issued to any news media organization, reporter, custodian of records, photographer, or other representative of any news media organization, which is governed by R.S. 45:1455 through 1458, shall be served at least ten days prior to the return date specified in the subpoena.

B. Nothing contained herein shall be construed to preclude or limit the right of the news media organization, reporter, photographer, custodian of records, or other representative of any news media organization to seek an order with respect to a

subpoena pursuant to Article 1354 or Article 1426 of the Code of Civil Procedure, including, without limitation, an order continuing the return date specified in the subpoena or quashing the subpoena on the ground that additional time is reasonably necessary for compliance with the subpoena.

C. In a proceeding to quash any subpoena governed by R.S. 45:1455 through 1458, the court may, after contradictory hearing, grant reasonable attorney fees and expenses to the prevailing party in the contradictory hearing.

§ 1457. Payment of cost of compliance; deposit into registry of court

A. Upon receipt of a subpoena governed by R.S. 45:1455 through 1458, the news media organization, reporter, custodian of records, photographer, or other representative of any news media organization shall notify the party requesting the issuance of the subpoena of the reasonable cost of compliance with the subpoena and the method of calculating the cost.

B. Upon receipt of notification of the cost of compliance as provided in Subsection A of this Section, the party requesting the issuance of the subpoena shall deposit into the registry of the court money or other security in the amount of such cost not less than two days prior to the return date specified in the subpoena. If this amount is not timely deposited, the subpoenaed party may file an affidavit with the court or tribunal setting forth that fact and no further compliance with the subpoena shall be necessary.

C. The cost of compliance calculated by the subpoenaed party shall be presumed to be reasonable unless the party requesting issuance of the subpoena requests a hearing, and the court finds, after such hearing, that the cost of compliance calculated by the subpoenaed party is not reasonable, in which case the court shall make an adjustment of the amount deposited into the registry of the court. The court may, after contradictory hearing, grant reasonable attorney fees and expenses to the prevailing party in that contradictory hearing.

D. Any amount deposited into the registry of the court pursuant to this Section shall be taxed as court costs pursuant to the rules governing the proceeding.

§ 1458. Application to other proceedings and discovery

The provisions of R.S. 45:1455 through 1458 shall apply to subpoenas issued in connection with all legislative hearings, administrative proceedings, grand jury hearings and proceedings conducted under Article 66 of the Code of Criminal Procedure. The provisions of this Chapter shall also govern all subpoenas issued in connection with depositions or other discovery authorized by law.

§ 1459. Qualified protection for nonconfidential news

A. “News” shall mean any written, oral, pictorial, photographic, electronic, or other information or communication, whether or not recorded, concerning local, national, or worldwide events or other matters of public concern or public interest or affecting the public welfare.

B. (1) Notwithstanding the provisions of any law to the contrary, no reporter or news media organization, as those terms are defined in R.S. 45:1451, nor any photographer, custodian of records, or other representative of any news media organization shall be adjudged in contempt by any court in connection with any civil or criminal proceeding, or by the legislature or other body having contempt powers, nor shall a grand jury seek to have such person held in contempt by any court, legislature, or other body having contempt powers for refusing or failing to disclose any news which was not published or broadcast but was obtained or prepared by such person in the course of gathering or obtaining news, or the source of any such news, even if such news was not obtained or received in confidence, unless a court has found that the party seeking such news has made a clear and specific showing that the news:

- (a) Is highly material and relevant;
- (b) Is critical or necessary to the maintenance of a party's claim, defense, or proof of an issue material thereto; and
- (c) Is not obtainable from any alternative source.

(2) A court shall order disclosure only of such portion, or portions, of the news sought as to which the above-described showing has been made and shall support such order with clear and specific findings made after a contradictory hearing.

(3) In any proceeding brought pursuant to this Subsection, the court may, after a contradictory hearing, grant reasonable attorney fees and expenses to the prevailing party in such hearing.

C. Notwithstanding the provisions of any law to the contrary, a person entitled to claim the qualified protection provided under the provisions of Subsection B of this Section to whom a subpoena is directed may, within ten days after the service thereof, or, on or before the time specified in the subpoena for compliance, if such time is less than ten days after service, serve upon the attorney designated in the subpoena written objection specifying the grounds for his objection. Once objection is made, the party serving the subpoena shall not be entitled to compliance except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the person who served the objection for an order compelling compliance with such subpoena after a hearing in conformity with the provisions of Subsection B of this Section and based upon the findings required therein.

D. (1) In addition to the provisions of Subsections B and C of this Section, and notwithstanding the provisions of any law to the contrary, no grand jury, or official body, acting on behalf or under the authority of the attorney general or a district attorney, shall request, make arrangement for, or otherwise cause the service of a subpoena upon any person entitled to claim the exemption provided under Subsection B of this Section unless the attorney general or a district attorney, acting either alone or upon the direction of a grand jury, has certified in writing that the information sought by such subpoena:

- (a) Is highly material and relevant;
- (b) Bears directly on the guilt or innocence of the accused; and
- (c) Is not obtainable from any alternative source.

(2) The written certification shall be made available to the subpoenaed person upon that person's request. If the certification required by this Subsection is made, the provisions of Subsection C of this Section shall not apply.

E. Any order ordering disclosure pursuant to Subsection C of this Section or compelling compliance with a subpoena pursuant to Subsection D of this Section shall be appealable under Code of Civil Procedure Article 2083. In case of any such appeal, the qualified protection set forth in Subsection B of this Section shall remain in full force and effect during the pendency of such appeal.

MAINE

No shield law exists for this state.

MARYLAND

(Md. Code Ann., Cts. & Jud. Proc. § 9-112 (2004))

§ 9-112. News media privilege

(a) In this section, "news media" means:

- (1) Newspapers;
- (2) Magazines;
- (3) Journals;
- (4) Press associations;
- (5) News agencies;
- (6) Wire services;
- (7) Radio;
- (8) Television; and
- (9) Any printed, photographic, mechanical, or electronic means of disseminating news and information to the public.

(b) The provisions of this section apply to any person who is, or has been, employed by the news media in any news gathering or news disseminating capacity.

(c) Except as provided in subsection (d) of this section, any judicial, legislative, or administrative body, or any body that has the power to issue subpoenas may not compel any person described in subsection (b) of this section to disclose:

- (1) The source of any news or information procured by the person while employed by the news media, whether or not the source has been promised confidentiality; or
- (2) Any news or information procured by the person while employed by the news media, in the course of pursuing professional activities, for

communication to the public but which is not so communicated, in whole or in part, including:

- (i) Notes;
- (ii) Outtakes;
- (iii) Photographs or photographic negatives;
- (iv) Video and sound tapes;
- (v) Film; and
- (vi) Other data, irrespective of its nature, not itself disseminated in any manner to the public.

(d)(1) A court may compel disclosure of news or information, if the court finds that the party seeking news or information protected under subsection (c)(2) of this section has established by clear and convincing evidence that:

- (i) The news or information is relevant to a significant legal issue before any judicial, legislative, or administrative body, or any body that has the power to issue subpoenas;
- (ii) The news or information could not, with due diligence, be obtained by any alternate means; and
- (iii) There is an overriding public interest in disclosure.

(2) A court may not compel disclosure under this subsection of the source of any news or information protected under subsection (c)(1) of this section.

(e) If any person employed by the news media disseminates a source of any news or information, or any portion of the news or information procured while pursuing professional activities, the protection from compelled disclosure under this section is not waived by the individual.

MASSACHUSETTS

No shield law exists for this state.

MICHIGAN

(Mich. Comp. Laws Ann. § 767.5a (West 2004))

767.5a. Reporters; disclosure of informant identity or information, exception; attorneys, clergy, physicians; privileged and confidential communications.

(1) A reporter or other person who is involved in the gathering or preparation of news for broadcast or publication shall not be required to disclose the identity of an informant, any unpublished information obtained from an informant, or any unpublished matter or documentation, in whatever manner recorded, relating to a communication with an informant, in any inquiry authorized by this act, except an inquiry for a crime punishable by imprisonment for life when it has been established that the information which is sought is essential to the purpose of the proceeding and that other available sources of the information have been exhausted.

MINNESOTA

(Minn. Stat. §§ 595.021-025 (2005))

595.021. News media; protection of sources; citation

Sections 595.021 to 595.025 may be cited as the “Minnesota Free Flow of Information Act.”

595.022. Public policy

In order to protect the public interest and the free flow of information, the news media should have the benefit of a substantial privilege not to reveal sources of information or to disclose unpublished information. To this end, the freedom of press requires protection of the confidential relationship between the news gatherer and the source of information. The purpose of sections 595.021 to 595.025 is to insure and perpetuate, consistent with the public interest, the confidential relationship between the news media and its sources.

595.023. Disclosure prohibited

Except as provided in section 595.024, no person who is or has been directly engaged in the gathering, procuring, compiling, editing, or publishing of information for the purpose of transmission, dissemination or publication to the public shall be required by any court, grand jury, agency, department or branch of the state, or any of its political subdivisions or other public body, or by either house of the legislature or any committee, officer, member, or employee thereof, to disclose in any proceeding the person or means from or through which information was obtained, or to disclose any unpublished information procured by the person in the course of work or any of the person’s notes, memoranda, recording tapes, film or other reportorial data whether or not it would tend to identify the person or means through which the information was obtained.

595.024. Exception and procedure

Subdivision 1. Disclosure; application. A person seeking disclosure may apply to the district court of the county where the person employed by or associated with a news media resides, has a principal place of business or where the proceeding in which the information sought is pending.

Subdivision 2. Disclosure allowed; conditions. The application shall be granted only if the court determines after hearing the parties that the person making application, by clear and convincing evidence, has met all three of the following conditions:

- (1) that there is probable cause to believe that the specific information sought (i) is clearly relevant to a gross misdemeanor or felony, or (ii) is clearly relevant to a misdemeanor so long as the information would not tend to identify the source of the information or the means through which it was obtained,

(2) that the information cannot be obtained by alternative means or remedies less destructive of first amendment rights, and

(3) that there is a compelling and overriding interest requiring the disclosure of the information where the disclosure is necessary to prevent injustice.

Subdivision 3. Determination; appeal. The district court shall consider the nature of the proceedings, the merits of the claims and defenses, the adequacies of alternative remedies, the relevancy of the information sought, and the possibility of establishing by other means that which the source is expected or may tend to prove. The court shall make its appropriate order after making findings of fact. The order may be appealed directly to the court of appeals according to the rules of appellate procedure. The order is stayed and nondisclosure shall remain in full force and effect during the pendency of the appeal. Where the court finds that the information sought has been published or broadcast, there shall be no automatic stay unless an appeal is filed within two days after the order is issued. Either party may request expedited consideration.

595.025. Defamation

Subdivision 1. Disclosure prohibition; applicability. The prohibition of disclosure provided in section 595.023 shall not apply in any defamation action where the person seeking disclosure can demonstrate that the identity of the source will lead to relevant evidence on the issue of actual malice.

Subdivision 2. Disclosure conditions. Notwithstanding the provisions of subdivision 1, the identity of the source of information shall not be ordered disclosed unless the following conditions are met:

(a) that there is probable cause to believe that the source has information clearly relevant to the issue of defamation;

(b) that the information cannot be obtained by any alternative means or remedy less destructive of first amendment rights.

Subdivision 3. Determination; appeal. The court shall make its order on the issue of disclosure after making findings of fact, which order may be appealed to the court of appeals according to the rules of appellate procedure. During the appeal the order is stayed and nondisclosure shall remain in full force and effect.

MISSISSIPPI

No shield law exists for this state.

MISSOURI

No shield law exists for this state.

MONTANA

(Mont. Code Ann. §§ 26-1-901 to 903 (2003))

26-1-901. Short title

This part shall be known and may be cited as the “Media Confidentiality Act.”

26-1-902. Extent of privilege

(1) Without his or its consent no person, including any newspaper, magazine, press association, news agency, news service, radio station, television station, or community antenna television service or any person connected with or employed by any of these for the purpose of gathering, writing, editing, or disseminating news may be examined as to or may be required to disclose any information obtained or prepared or the source of that information in any legal proceeding if the information was gathered, received, or processed in the course of his employment or its business.

(2) A person described in subsection (1) may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose or produce the source of any information or for refusing to disclose any information obtained or prepared in gathering, receiving, or processing information in the course of his or its business.

26-1-903. Waiver of privilege

(1) Except as provided in subsection (2), dissemination in whole or in part does not constitute a waiver of provisions of 26-1-902.

(2) If the person claiming the privilege testifies, with or without having been subpoenaed or ordered to testify or produce the source, before a judicial, legislative, administrative, or other body having the power to issue subpoenas or judicially enforceable orders, he does not waive the provisions of 26-1-902 unless the person voluntarily agrees to waive the privilege or voluntarily discloses the source in the course of his testimony. Except as provided in this subsection, the provisions of 26-1-902 may not be waived.

NEBRASKA

(Neb. Rev. Stat. §§ 20-144 to 147 (2004))

§ 20-144. Finding by Legislature.

The Legislature finds:

(1) That the policy of the State of Nebraska is to insure the free flow of news and other information to the public, and that those who gather, write, or edit information for the public or disseminate information to the public may perform these vital functions only in a free and unfettered atmosphere;

(2) That such persons shall not be inhibited, directly or indirectly, by governmental restraint or sanction imposed by governmental process, but rather that they shall be

encouraged to gather, write, edit, or disseminate news or other information vigorously so that the public may be fully informed;

(3) That compelling such persons to disclose a source of information or disclose unpublished information is contrary to the public interest and inhibits the free flow of information to the public;

(4) That there is an urgent need to provide effective measures to halt and prevent this inhibition;

(5) That the obstruction of the free flow of information through any medium of communication to the public affects interstate commerce; and

(6) That sections 20-144 to 20-147 are necessary to insure the free flow of information and to implement the first and fourteenth amendments and Article I, section 5, of the United States Constitution, and the Nebraska Constitution.

§ 20-145. Terms, defined.

For purposes of the Free Flow of Information Act, unless the context otherwise requires:

(1) Federal or state proceeding shall include any proceeding or investigation before or by any federal or state judicial, legislative, executive, or administrative body;

(2) Medium of communication shall include, but not be limited to, any newspaper, magazine, other periodical, book, pamphlet, news service, wire service, news or feature syndicate, broadcast station or network, or cable television system;

(3) Information shall include any written, audio, oral, or pictorial news or other material;

(4) Published or broadcast information shall mean any information disseminated to the public by the person from whom disclosure is sought;

(5) Unpublished or nonbroadcast information shall include information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and shall include, but not be limited to, all notes, outtakes, photographs, film, tapes, or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published or broadcast information based upon or related to such material has been disseminated;

(6) Processing shall include compiling, storing, transferring, handling, and editing of information; and

(7) Person shall mean any individual, partnership, limited liability company, corporation, association, or other legal entity existing under or authorized by the law of the United States, any state or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any foreign country.

§ 20-146. Procuring, gathering, writing, editing, or disseminating news or other information; not required to disclose to courts or public.

No person engaged in procuring, gathering, writing, editing, or disseminating news or other information to the public shall be required to disclose in any federal or state proceeding:

- (1) The source of any published or unpublished, broadcast or nonbroadcast information obtained in the gathering, receiving, or processing of information for any medium of communication to the public; or
- (2) Any unpublished or nonbroadcast information obtained or prepared in gathering, receiving, or processing of information for any medium of communication to the public.

§ 20-147. Act, how cited.

Sections 20-144 to 20-147 shall be known and may be cited as the Free Flow of Information Act.

NEVADA

(Nev. Rev. Stat. §§ 49.275, 49.385 (2005))

49.275. News media

No reporter, former reporter or editorial employee of any newspaper, periodical or press association or employee of any radio or television station may be required to disclose any published or unpublished information obtained or prepared by such person in such person's professional capacity in gathering, receiving or processing information for communication to the public, or the source of any information procured or obtained by such person, in any legal proceedings, trial or investigation:

1. Before any court, grand jury, coroner's inquest, jury or any officer thereof.
2. Before the legislature or any committee thereof.
3. Before any department, agency or commission of the state.
4. Before any local governing body or committee thereof, or any officer of a local government.

49.385. Waiver of privilege by voluntary disclosure

1. A person upon whom these rules confer a privilege against disclosure of a confidential matter waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter.
2. This section does not apply if the disclosure is:

- (a) Itself a privileged communication; or
- (b) Made to an interpreter employed merely to facilitate communications.

NEW HAMPSHIRE

No shield law exists for this state.

NEW JERSEY

(N.J. Stat. Ann. §§ 2A:84A-21 to 21.13 (2004))

2A:84A-21. Newsperson's privilege

Subject to Rule 37 [Now N.J.R.E. 530], a person engaged on, engaged in, connected with, or employed by news media for the purpose of gathering, procuring, transmitting, compiling, editing or disseminating news for the general public or on whose behalf news is so gathered, procured, transmitted, compiled, edited or disseminated has a privilege to refuse to disclose, in any legal or quasi-legal proceeding or before any investigative body, including, but not limited to, any court, grand jury, petit jury, administrative agency, the Legislature or legislative committee, or elsewhere.

- a. The source, author, means, agency or person from or through whom any information was procured, obtained, supplied, furnished, gathered, transmitted, compiled, edited, disseminated, or delivered; and
- b. Any news or information obtained in the course of pursuing his professional activities whether or not it is disseminated.

The provisions of this rule insofar as it relates to radio or television stations shall not apply unless the radio or television station maintains and keeps open for inspection, for a period of at least 1 year from the date of an actual broadcast or telecast, an exact recording, transcription, kinescopic film or certified written transcript of the actual broadcast or telecast.

2A:84A-21a. Definitions; newsperson's privilege

Unless a different meaning clearly appears from the context of this act, as used in this act:

- a. "News media" means newspapers, magazines, press associations, news agencies, wire services, radio, television or other similar printed, photographic, mechanical or electronic means of disseminating news to the general public.
- b. "News" means any written, oral or pictorial information gathered, procured, transmitted, compiled, edited or disseminated by, or on behalf of any person engaged in, engaged on, connected with or employed by a news media and so procured or obtained while such required relationship is in effect.
- c. "Newspaper" means a paper that is printed and distributed ordinarily not

less frequently than once a week and that contains news, articles of opinion, editorials, features, advertising, or other matter regarded as of current interest, has a paid circulation and has been entered at a United States post office as second class matter.

d. "Magazine" means a publication containing news which is published and distributed periodically, has a paid circulation and has been entered at a United States post office as second class matter.

e. "News agency" means a commercial organization that collects and supplies news to subscribing newspapers, magazines, periodicals and news broadcasters.

f. "Press association" means an association of newspapers or magazines formed to gather and distribute news to its members.

g. "Wire service" means a news agency that sends out syndicated news copy by wire to subscribing newspapers, magazines, periodicals or news broadcasters.

h. "In the course of pursuing his professional activities" means any situation, including a social gathering, in which a reporter obtains information for the purpose of disseminating it to the public, but does not include any situation in which a reporter intentionally conceals from the source the fact that he is a reporter, and does not include any situation in which a reporter is an eyewitness to, or participant in, any act involving physical violence or property damage.

2A:84A-21.1. Criminal proceeding; subpoena; application of newsperson's privilege

Where a newsperson is required to disclose information pursuant to a subpoena [So in original] issued by or on behalf of a defendant in a criminal proceeding, not including proceedings before administrative or investigative bodies, grand juries, or legislative committees or commissions, the provisions and procedures in this act are applicable to the claim and exercise of the newsperson's privilege under Rule 27 (C. 2A:84A-21) [See now N.J.R.E. 508].

2A:84A-21.3. Prima facie showing subpoenaed materials obtained during professional activities; waiver of newsperson's privilege or other grounds for disclosure; hearing

a. To sustain a claim of the newsperson's privilege under Rule 27 [Now N.J.R.E. 508] the claimant shall make a prima facie showing that he is engaged in, connected with, or employed by a news media for the purpose of gathering, procuring, transmitting, compiling, editing or disseminating news for the general public or on whose behalf news is so gathered, procured, transmitted, compiled, edited or disseminated, and that the subpoenaed [So in original] materials were obtained in the course of pursuing his professional activities.

b. To overcome a finding by the court that the claimant has made a prima facie showing under a. above, the party seeking enforcement of the subpoena shall show by clear and convincing evidence that the privilege has been waived under Rule 37

(C.2A:84A-29) [Now, N.J.R.E. 530] or by a preponderance of the evidence that there is a reasonable probability that the subpoenaed materials are relevant, material and necessary to the defense, that they could not be secured from any less intrusive source, that the value of the material sought as it bears upon the issue of guilt or innocence outweighs the privilege against disclosure, and that the request is not overbroad, oppressive, or unreasonably burdensome which may be overcome by evidence that all or part of the information sought is irrelevant, immaterial, unnecessary to the defense, or that it can be secured from another source. Publication shall constitute a waiver only as to the specific materials published.

c. The determinations to be made by the court pursuant to this section shall be made only after a hearing in which the party claiming the privilege and the party seeking enforcement of the subpoena shall have a full opportunity to present evidence and argument with respect to each of the materials or items sought to be subpoenaed.

2A:84A-21.9. News media person or entity; freedom from searches and seizures of documentary materials; exceptions

Any person, corporation, partnership, proprietorship or other entity engaged on, engaged in, connected with, or otherwise employed in gathering, procuring, transmitting, compiling, editing, publishing, or disseminating news for the public, or on whose behalf news is so gathered, procured, transmitted, compiled, edited, published or disseminated shall be free from searches and seizures, by State, county and local law enforcement officers with respect to any documentary materials obtained in the course of pursuing the aforesaid activities whether or not such material has been or will be disseminated or published.

This section shall not restrict or impair the ability of any law enforcement officer, pursuant to otherwise applicable law, to search for or seize such materials, if there is probable cause to believe that:

- a. The person, corporation, partnership, proprietorship or other entity possessing the materials has committed or is committing the criminal offense for which the materials are sought; or
- b. The immediate seizure of the materials is necessary to prevent the death of or serious bodily injury to a human being; or
- c. The giving of notice pursuant to a subpoena duces tecum would result in the destruction, alteration or deliberate concealment of the documentary materials other than work product; or
- d. The documentary materials, other than work product, have not been produced in response to a court order directing compliance with a subpoena duces tecum, and
 - (1) All appellate remedies have been exhausted by the party seeking to quash the subpoena duces tecum; or
 - (2) There is a probability that the delay in an investigation or trial occasioned by further proceedings relating to the subpoena would threaten the interests of

justice. In the event a search warrant is sought pursuant to this subparagraph, the person, corporation, partnership, proprietorship or other entity possessing the materials shall be afforded adequate opportunity to submit an affidavit to the court setting forth the basis for any contention that the materials sought are not subject to seizure.

2A:84A-21.12. Additional definitions; newsperson's privilege

As used in this act:

- a. "Documentary materials" means materials upon which information is recorded and includes, but is not limited to, written or printed materials, photographs, tapes, videotapes, negatives, films, outtakes and interview files.
- b. "Work product" means any documentary materials created by or for a person in connection with his plans, or the plans of the person creating such materials, to gather, file procure, transmit, compile, edit, publish or disseminate news for the public, except such work product as constitutes contraband, or the fruits, instrumentalities or evidence of a crime.
- c. "Any other governmental unit" includes any branch, subdivision or agency of the government of the State or any locality within it.
- d. "Attorney General" means the Attorney General of the State of New Jersey, or his designee.
- e. "County prosecutor" means the duly appointed prosecutor of a county, or his designee.

2A:84A-21.13. Inapplicability of act to rights of department of corrections

Nothing contained in this act shall be construed to limit the right of the Department of Corrections to search the offices of inmate newspapers or the public information offices of any inmate organization located within a correctional facility.

NEW MEXICO

(N.M. Stat. Ann. § 38-6-7 (West 2004))

§ 38-6-7. News sources and information; mandatory disclosure prohibited; definitions; special procedure for prevention of injustice issue

A. Unless disclosure be essential to prevent injustice, no journalist or newscaster, or working associates of a journalist or newscaster, shall be required to disclose before any proceeding or authority, either:

- (1) the source of any published or unpublished information obtained in the gathering, receiving or processing of information for any medium of communication to the public; or

(2) any unpublished information obtained or prepared in gathering, receiving or processing of information for any medium of communication to the public.

B. For the purpose of this act:

(1) "proceeding or authority" includes any proceeding or investigation before, or by, any legislative, judicial, executive or administrative body or person;

(2) "medium of communication" means any newspaper, magazine, press association, news service, wire service, news or feature syndicate, broadcast or television station or network, or cable television system;

(3) "information" means any written, oral or pictorial news or other material;

(4) "published information" means any information disseminated to the public by the person from whom disclosure is sought;

(5) "unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated, and includes but is not limited to, all notes, news copy, outtakes, photographs, films, recording tapes or other data of whatever sort not disseminated to the public through a medium of communication;

(6) "processing" includes compiling, storing and editing of information;

(7) "journalist" means any person who, for gain is engaged in gathering, preparing, editing, analyzing or commenting on news for a newspaper, magazine, news agency, news or feature syndicate, press association or wire service, or who was so engaged at the time a source or information was procured;

(8) "newscaster" means any person who, for gain is engaged in gathering, preparing, editing, analyzing, commenting on or broadcasting news for radio or television transmission, or who was so engaged at the time a source or information was procured; and

(9) "working associates" means any person who works for the person, in his capacity as a journalist or newscaster, from whom a source or information is sought and who was so engaged at the time a source or information was procured, or any person employed by the same individual or entity that employs the person, in his capacity as a journalist or newscaster, from whom a source or information is sought, and who was so engaged at the time a source or information was procured.

C. If the proceeding in which disclosure is sought is in the district court, that court will determine whether disclosure is essential to prevent injustice. In all other proceedings, application shall be made to the district court of the county in which the proceeding is being held for an order for disclosure. Disclosure shall, in no event, be ordered except upon written order of the district court stating the reasons why

disclosure is essential to prevent injustice. Such an order is appealable to the supreme court if the appeal is docketed in that court within ten days after its entry. The matter shall be considered as an extraordinary proceeding and shall be heard de novo and within twenty days from date of docketing. The taking of an appeal shall operate to stay proceedings as to the prevention of injustice issue only in the district court.

NEW YORK

(N.Y. Civ. Rights Law § 79-h (McKinney's Consol. 2004))

§ 79-h. Special provisions relating to persons employed by, or connected with, news media

(a) Definitions. As used in this section, the following definitions shall apply:

(1) "Newspaper" shall mean a paper that is printed and distributed ordinarily not less frequently than once a week, and has done so for at least one year, and that contains news, articles of opinion (as editorials), features, advertising, or other matter regarded as of current interest, has a paid circulation and has been entered at United States post-office as second-class matter.

(2) "Magazine" shall mean a publication containing news which is published and distributed periodically, and has done so for at least one year, has a paid circulation and has been entered at a United States post-office as second-class matter.

(3) "News agency" shall mean a commercial organization that collects and supplies news to subscribing newspapers, magazines, periodicals and news broadcasters.

(4) "Press association" shall mean an association of newspapers and/or magazines formed to gather and distribute news to its members.

(5) "Wire service" shall mean a news agency that sends out syndicated news copy by wire to subscribing newspapers, magazines, periodicals or newscasters.

(6) "Professional journalist" shall mean one who, for gain or livelihood, is engaged in gathering, preparing, collecting, writing, editing, filming, taping or photographing of news intended for a newspaper, magazine, news agency, press association or wire service or other professional medium or agency which has as one of its regular functions the processing and researching of news intended for dissemination to the public; such person shall be someone performing said function either as a regular employee or as one otherwise professionally affiliated for gain or livelihood with such medium of communication.

(7) "Newscaster" shall mean a person who, for gain or livelihood, is engaged in analyzing, commenting on or broadcasting, news by radio or television transmission.

(8) "News" shall mean written, oral, pictorial, photographic, or electronically recorded information or communication concerning local, national or worldwide events or other matters of public concern or public interest or affecting the public welfare.

(b) Exemption of professional journalists and newscasters from contempt: Absolute protection for confidential news. Notwithstanding the provisions of any general or specific law to the contrary, no professional journalist or newscaster presently or having previously been employed or otherwise associated with any newspaper, magazine, news agency, press association, wire service, radio or television transmission station or network or other professional medium of communicating news or information to the public shall be adjudged in contempt by any court in connection with any civil or criminal proceeding, or by the legislature or other body having contempt powers, nor shall a grand jury seek to have a journalist or newscaster held in contempt by any court, legislature or other body having contempt powers for refusing or failing to disclose any news obtained or received in confidence or the identity of the source of any such news coming into such person's possession in the course of gathering or obtaining news for publication or to be published in a newspaper, magazine, or for broadcast by a radio or television transmission station or network or for public dissemination by any other professional medium or agency which has as one of its main functions the dissemination of news to the public, by which such person is professionally employed or otherwise associated in a news gathering capacity notwithstanding that the material or identity of a source of such material or related material gathered by a person described above performing a function described above is or is not highly relevant to a particular inquiry of government and notwithstanding that the information was not solicited by the journalist or newscaster prior to disclosure to such person.

(c) Exemption of professional journalists and newscasters from contempt: Qualified protection for nonconfidential news. Notwithstanding the provisions of any general or specific law to the contrary, no professional journalist or newscaster presently or having previously been employed or otherwise associated with any newspaper, magazine, news agency, press association, wire service, radio or television transmission station or network or other professional medium of communicating news to the public shall be adjudged in contempt by any court in connection with any civil or criminal proceeding, or by the legislature or other body having contempt powers, nor shall a grand jury seek to have a journalist or newscaster held in contempt by any court, legislature, or other body having contempt powers for refusing or failing to disclose any unpublished news obtained or prepared by a journalist or newscaster in the course of gathering or obtaining news as provided in subdivision (b) of this section, or the source of any such news, where such news was not obtained or received in confidence, unless the party seeking such news has made a clear and specific showing that the news: (i) is highly material and relevant; (ii) is critical or necessary to the maintenance of a party's claim, defense or proof of an issue material thereto; and (iii) is not obtainable from any alternative source. A court shall order disclosure only of such portion, or portions, of the news sought as to which the above-described showing has been made and shall support such order with clear and specific findings made after a hearing. The provisions of this subdivision shall not affect the availability, under appropriate circumstances, of sanctions under section thirty-one hundred twenty-six of the civil practice law and rules.

(d) Any information obtained in violation of the provisions of this section shall be inadmissible in any action or proceeding or hearing before any agency.

(e) No fine or imprisonment may be imposed against a person for any refusal to disclose information privileged by the provisions of this section.

(f) The privilege contained within this section shall apply to supervisory or employer third person or organization having authority over the person described in this section.

(g) Notwithstanding the provisions of this section, a person entitled to claim the exemption provided under subdivision (b) or (c) of this section waives such exemption if such person voluntarily discloses or consents to disclosure of the specific information sought to be disclosed to any person not otherwise entitled to claim the exemptions provided by this section.

NORTH CAROLINA

(West's N. C. Gen. Stat. Ann. § 8-53.11 (2004))

§ 8-53.11. Persons, companies, or other entities engaged in gathering or dissemination of news

(a) Definitions. — The following definitions apply in this section:

(1) Journalist. — Any person, company, or entity, or the employees, independent contractors, or agents of that person, company, or entity, engaged in the business of gathering, compiling, writing, editing, photographing, recording, or processing information for dissemination via any news medium.

(2) Legal proceeding. — Any grand jury proceeding or grand jury investigation; any criminal prosecution, civil suit, or related proceeding in any court; and any judicial or quasi-judicial proceeding before any administrative, legislative, or regulatory board, agency, or tribunal.

(3) News medium. — Any entity regularly engaged in the business of publication or distribution of news via print, broadcast, or other electronic means accessible to the general public.

(b) A journalist has a qualified privilege against disclosure in any legal proceeding of any confidential or nonconfidential information, document, or item obtained or prepared while acting as a journalist.

(c) In order to overcome the qualified privilege provided by subsection (b) of this section, any person seeking to compel a journalist to testify or produce information must establish by the greater weight of the evidence that the testimony or production sought:

(1) Is relevant and material to the proper administration of the legal proceeding for which the testimony or production is sought;

(2) Cannot be obtained from alternate sources; and

(3) Is essential to the maintenance of a claim or defense of the person on whose behalf the testimony or production is sought.

Any order to compel any testimony or production as to which the qualified privilege has been asserted shall be issued only after notice to the journalist and a hearing and shall include clear and specific findings as to the showing made by the person seeking the testimony or production.

(d) Notwithstanding subsections (b) and (c) of this section, a journalist has no privilege against disclosure of any information, document, or item obtained as the result of the journalist's eyewitness observations of criminal or tortious conduct, including any physical evidence or visual or audio recording of the observed conduct.

NORTH DAKOTA

(N.D. Cent. Code § 31-01-06.2 (Matthew Bender 2003))

31-01-06.2 Disclosure of news sources and information required only on court order.

No person shall be required in any proceeding or hearing to disclose any information or the source of any information procured or obtained while the person was engaged in gathering, writing, photographing, or editing news and was employed by or acting for any organization engaged in publishing or broadcasting news, unless directed by an order of a district court of this state which, after hearing, finds that the failure of disclosure of such evidence will cause a miscarriage of justice.

OHIO

(Ohio Rev. Code Ann. §§ 2739.04, 2739.12 (Baldwin's Ohio Revised Code 2004))

2739.04 Revelation of news source by broadcasters

No person engaged in the work of, or connected with, or employed by any noncommercial educational or commercial radio broadcasting station, or any noncommercial educational or commercial television broadcasting station, or network of such stations, for the purpose of gathering, procuring, compiling, editing, disseminating, publishing, or broadcasting news shall be required to disclose the source of any information procured or obtained by such person in the course of his employment, in any legal proceeding, trial, or investigation before any court, grand jury, petit jury, or any officer thereof, before the presiding officer of any tribunal, or his agent, or before any commission, department, division, or bureau of this state, or before any county or municipal body, officer, or committee thereof.

Every noncommercial educational or commercial radio broadcasting station, and every noncommercial educational or commercial television broadcasting station shall maintain for a period of six months from the date of its broadcast thereof, a record of those statements of information the source of which was procured or obtained by persons employed by the station in gathering, procuring, compiling, editing, disseminating, publishing, or broadcasting news.

As used in this section:

(A) “Record” includes a tape, disc, script, or any other item or document that sets forth the content of the statements that are required by this section to be recorded.

(B) “Noncommercial educational television or radio broadcasting station” means a television or radio broadcast station that is licensed by the federal communications commission as a noncommercial educational radio or television broadcast station, transmits only noncommercial programs for educational purposes, and is owned and operated by:

(1) A public agency or institution or a nonprofit private foundation, corporation, or association;

(2) A municipal corporation.

2739.12 Newspaper reporters not required to reveal source of information

No person engaged in the work of, or connected with, or employed by any newspaper or any press association for the purpose of gathering, procuring, compiling, editing, disseminating, or publishing news shall be required to disclose the source of any information procured or obtained by such person in the course of his employment, in any legal proceeding, trial, or investigation before any court, grand jury, petit jury, or any officer thereof, before the presiding officer of any tribunal, or his agent, or before any commission, department, division, or bureau of this state, or before any county or municipal body, officer or committee thereof.

OKLAHOMA

(Okla. Stat. Ann. Tit. 12, § 2506 (2004))

§ 2506. Journalist’s privilege

A. As used in this section:

1. “State proceeding” includes any proceeding or investigation before or by any judicial, legislative, executive or administrative body in this state;

2. “Medium of communication” includes any newspaper, magazine, other periodical, book, pamphlet, news service, wire service, news or feature syndicate, broadcast station or network, cable television system, or record;

3. “Information” includes any written, oral or pictorial news or other record;

4. “Published information” means any information disseminated to the public by the person from whom disclosure is sought;

5. “Unpublished information” includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated, and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated;

6. “Processing” includes compiling, storing and editing of information; and
7. “Journalist” means any person who is a reporter, photographer, editor, commentator, journalist, correspondent, announcer, or other individual regularly engaged in obtaining, writing, reviewing, editing, or otherwise preparing news for any newspaper, periodical, press association, newspaper syndicate, wire service, radio or television station, or other news service. Any individual employed by any such news service in the performance of any of the above-mentioned activities shall be deemed to be regularly engaged in such activities. However, journalist shall not include any governmental entity or individual employed thereby engaged in official governmental information activities.

B. No journalist shall be required to disclose in a state proceeding either:

1. The source of any published or unpublished information obtained in the gathering, receiving or processing of information for any medium of communication to the public; or
2. Any unpublished information obtained or prepared in gathering, receiving or processing of information for any medium of communication to the public; unless the court finds that the party seeking the information or identity has established by clear and convincing evidence that such information or identity is relevant to a significant issue in the action and could not with due diligence be obtained by alternate means.

This subsection does not apply with respect to the content or source of allegedly defamatory information, in a civil action for defamation wherein the defendant asserts a defense based on the content or source of such information.

OREGON

(West’s Or. Rev. Stat. §§ 44.510 to 540 (2003))

44.510. Definitions

As used in ORS 44.510 to 44.540, unless the context requires otherwise:

- (1) “Information” has its ordinary meaning and includes, but is not limited to, any written, oral, pictorial or electronically recorded news or other data.
- (2) “Medium of communication” has its ordinary meaning and includes, but is not limited to, any newspaper, magazine or other periodical, book, pamphlet, news service, wire service, news or feature syndicate, broadcast station or network, or cable television system. Any information which is a portion of a governmental utterance made by an official or employee of government within the scope of the official’s or employee’s governmental function, or any political publication subject to ORS 260.532 and 260.605, is not included within the meaning of “medium of communication.”
- (3) “Processing” has its ordinary meaning and includes, but is not limited to, the compiling, storing and editing of information.

(4) “Published information” means any information disseminated to the public.

(5) “Unpublished information” means any information not disseminated to the public, whether or not related information has been disseminated. “Unpublished information” includes, but is not limited to, all notes, out-takes, photographs, tapes or other data of whatever sort not themselves disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated.

44.520. Media personnel, compulsion of testimony or production of evidence; search of media persons' papers, effects or work premises

(1) No person connected with, employed by or engaged in any medium of communication to the public shall be required by a legislative, executive or judicial officer or body, or any other authority having power to compel testimony or the production of evidence, to disclose, by subpoena or otherwise:

- (a) The source of any published or unpublished information obtained by the person in the course of gathering, receiving or processing information for any medium of communication to the public; or
- (b) Any unpublished information obtained or prepared by the person in the course of gathering, receiving or processing information for any medium of communication to the public.

(2) No papers, effects or work premises of a person connected with, employed by or engaged in any medium of communication to the public shall be subject to a search by a legislative, executive or judicial officer or body, or any other authority having power to compel the production of evidence, by search warrant or otherwise. The provisions of this subsection, however, shall not apply where probable cause exists to believe that the person has committed, is committing or is about to commit a crime.

44.540. Informant as witness

If the informant offers the informant as a witness, it is deemed a consent to the examination also of a person described in ORS 44.520 on the same subject.

PENNSYLVANIA

(42 Pa. Cons. Stat. Ann. § 5942 (Purdon's Pennsylvania Statutes and Consolidated Statutes Annotated 2004))

§ 5942. Confidential communications to news reporters

(a) General rule. — No person engaged on, connected with, or employed by any newspaper of general circulation or any press association or any radio or television station, or any magazine of general circulation, for the purpose of gathering, procuring, compiling, editing or publishing news, shall be required to disclose the source of any information procured or obtained by such person, in any legal proceeding, trial or investigation before any government unit.

(b) Exception. — The provisions of subsection (a) insofar as they relate to radio or television stations shall not apply unless the radio or television station maintains and keeps open for inspection, for a period of at least one year from the date of the actual broadcast or telecast, an exact recording, transcription, kinescopic film or certified written transcript of the actual broadcast or telecast.

RHODE ISLAND

(R.I. Gen. Laws §§ 9-19.1-1 to 1-3 (2004))

9-19.1-1. “Newspaper” defined. —

A newspaper or periodical as described in this chapter must be issued at regular intervals and have a paid circulation.

9-19.1-2. Nondisclosure of confidential information. —

Except as provided in § 9-19.1-3, no person shall be required by any court, grand jury, agency, department, or commission of the state to reveal confidential association, to disclose any confidential information, or to disclose the source of any confidential information received or obtained by him or her in his or her capacity as a reporter, editor, commentator, journalist, writer, correspondent, newsphotographer, or other person directly engaged in the gathering or presentation of news for any accredited newspaper, periodical, press association, newspaper syndicate, wire service, or radio or television station.

9-19.1-3. Qualifications. —

(a) The privilege conferred by § 9-19.1-2 shall not apply to any information which has at any time been published, broadcast, or otherwise made public by the person claiming the privilege.

(b) The privilege conferred by § 9-19.1-2 shall not apply:

(1) To the source of any allegedly defamatory information in any case where the defendant, in a civil action for defamation, asserts a defense based on the source of the information; or

(2) To the source of any information concerning the details of any grand jury or other proceeding which was required to be secret under the laws of the state.

(c) In any case where a person claims a privilege conferred by this statute, the person seeking the information or the source of the information may apply to the superior court for an order divesting the privilege. If the court, after hearing the parties, shall find that there is substantial evidence that disclosure of the information or of the source of the information is necessary to permit a criminal prosecution for the commission of a specific felony, or to prevent a threat to human life, and that the information or the source of the information is not available from other prospective witnesses, the court may make such order as may be proper under the circumstance. Any such order shall be appealable under the provisions of chapter 24 of title 9.

SOUTH CAROLINA

(S.C. Code Ann. § 19-11-100 (Law Co-op. Supp. 2004))

§ 19-11-100. Qualified privilege against disclosure for news media; waiver.

(A) A person, company, or entity engaged in or that has been engaged in the gathering and dissemination of news for the public through a newspaper, book, magazine, radio, television, news or wire service, or other medium has a qualified privilege against disclosure of any information, document, or item obtained or prepared in the gathering or dissemination of news in any judicial, legislative, or administrative proceeding in which the compelled disclosure is sought and where the one asserting the privilege is not a party in interest to the proceeding.

(B) The person, company, or other entity may not be compelled to disclose any information or document or produce any item obtained or prepared in the gathering or dissemination of news unless the party seeking to compel the production or testimony establishes by clear and convincing evidence that this privilege has been knowingly waived or that the testimony or production sought:

- (1) is material and relevant to the controversy for which the testimony or production is sought;
- (2) cannot be reasonably obtained by alternative means; and
- (3) is necessary to the proper preparation or presentation of the case of a party seeking the information, document, or item.

(C) Publication of any information, document, or item obtained in the gathering and dissemination of news does not constitute a waiver of the qualified privilege against compelled disclosure provided for in this section.

SOUTH DAKOTA

No shield law exists for this state.

TENNESSEE

(Tenn. Code Ann. § 24-1-208 (West's 2004))

§ 24-1-208. Privileges and immunities; news media; exceptions

(a) A person engaged in gathering information for publication or broadcast connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast, shall not be required by a court, a grand jury, the general assembly, or any administrative body, to disclose before the general assembly or any Tennessee court, grand jury, agency, department, or commission any information or the source of any information procured for publication or broadcast.

(b) Subsection (a) shall not apply with respect to the source of any allegedly defamatory information in any case where the defendant in a civil action for defamation asserts a defense based on the source of such information.

(c)(1) Any person seeking information or the source thereof protected under this section may apply for an order divesting such protection. Such application shall be made to the judge of the court having jurisdiction over the hearing, action or other proceeding in which the information sought is pending.

(2) The application shall be granted only if the court after hearing the parties determines that the person seeking the information has shown by clear and convincing evidence that:

- (A) There is probable cause to believe that the person from whom the information is sought has information which is clearly relevant to a specific probable violation of law;
- (B) The person has demonstrated that the information sought cannot reasonably be obtained by alternative means; and
- (C) The person has demonstrated a compelling and overriding public interest of the people of the state of Tennessee in the information.

(3)(A) Any order of the trial court may be appealed to the court of appeals in the same manner as other civil cases. The court of appeals shall make an independent determination of the applicability of the standards in this subsection to the facts in the record and shall not accord a presumption of correctness to the trial court's findings.

- (B) The execution of or any proceeding to enforce a judgment divesting the protection of this section shall be stayed pending appeal upon the timely filing of a notice of appeal in accordance with Rule 3 of the Tennessee Rules of Appellate Procedure, and the appeal shall be expedited upon the docket of the court of appeals upon the application of either party.
- (C) Any order of the court of appeals may be appealed to the supreme court of Tennessee as provided by law.

TEXAS

No shield law exists for this state.

UTAH

No shield law exists for this state.

VERMONT

No shield law exists for this state.

VIRGINIA

No shield law exists for this state.

WASHINGTON

(H.B. 1366, to take effect July 22, 2007)

(1) Except as provided in subsection (2) of this section, no judicial, legislative, administrative, or other body with the power to issue a subpoena or other compulsory process may compel the news media to testify, produce, or otherwise disclose:

(a) The identity of a source of any news or information or any information that would tend to identify the source where such source has a reasonable expectation of confidentiality; or

(b) Any news or information obtained or prepared by the news media in its capacity in gathering, receiving, or processing news or information for potential communication to the public, including, but not limited to, any notes, outtakes, photographs, video or sound tapes, film, or other data of whatever sort in any medium now known or hereafter devised. This does not include physical evidence of a crime.

(2) A court may compel disclosure of the news or information described in subsection (1)(b) of this section if the court finds that the party seeking such news or information established by clear and convincing evidence:

(a)(i) In a criminal investigation or prosecution, based on information other than that information being sought, that there are reasonable grounds to believe that a crime has occurred; or

(ii) In a civil action or proceeding, based on information other than that information being sought, that there is a *prima facie* cause of action; and

(b) In all matters, whether criminal or civil, that:

(i) The news or information is highly material and relevant;

(ii) The news or information is critical or necessary to the maintenance of a party's claim, defense, or proof of an issue material thereto;

(iii) The party seeking such news or information has exhausted all reasonable and available means to obtain it from alternative sources; and

(iv) There is a compelling public interest in the disclosure. A court may consider whether or not the news or information was obtained from a confidential source in evaluating the public interest in disclosure.

(3) The protection from compelled disclosure contained in subsection (1) of this section also applies to any subpoena issued to, or other compulsory process against, a nonnews media party where such subpoena or process seeks records, information, or other communications relating to business transactions between such nonnews media party and the news media for the purpose of discovering the identity of a source or obtaining news or information described in subsection (1) of this section. Whenever a subpoena is issued to, or other compulsory process is initiated against, a nonnews media party where such subpoena or process seeks information or communications on business transactions with the news media, the affected news media shall be given reasonable and timely notice of the subpoena or compulsory process before it is executed or initiated, as the case may be, and an opportunity to be heard. In the event that the subpoena to, or other compulsory process against, the nonnews media party is in connection with a criminal investigation in which the news media is the express target, and advance notice as provided in this section

would pose a clear and substantial threat to the integrity of the investigation, the governmental authority shall so certify to such a threat in court and notification of the subpoena or compulsory process shall be given to the affected news media as soon thereafter as it is determined that such notification will no longer pose a clear and substantial threat to the integrity of the investigation.

(4) Publication or dissemination by the news media of news or information described in subsection (1) of this section, or a portion thereof, shall not constitute a waiver of the protection from compelled disclosure that is contained in subsection (1) of this section. In the event that the fact of publication of news or information must be proved in any proceeding, that fact and the contents of the publication may be established by judicial notice.

(5) The term “news media” means:

(a) Any newspaper, magazine or other periodical, book publisher, news agency, wire service, radio or television station or network, cable or satellite station or network, or audio or audiovisual production company, or any entity that is in the regular business of news gathering and disseminating news or information to the public by any means, including, but not limited to, print, broadcast, photographic, mechanical, internet, or electronic distribution;

(b) Any person who is or has been an employee, agent, or independent contractor of any entity listed in (a) of this subsection, who is or has been engaged in bona fide news gathering for such entity, and who obtained or prepared the news or information that is sought while serving in that capacity; or

(c) Any parent, subsidiary, or affiliate of the entities listed in (a) or (b) of this subsection to the extent that the subpoena or other compulsory process seeks news or information described in subsection (1) of this section.

(6) In all matters adjudicated pursuant to this section, a court of competent jurisdiction may exercise its inherent powers to conduct all appropriate proceedings required in order to make necessary findings of fact and enter conclusions of law.

WEST VIRGINIA

No shield law exists for this state.

WISCONSIN

No shield law exists for this state.

WYOMING

No shield law exists for this state.